

**Review comments on the Employee Concerns Program (ECP)
Authorization Basis Amendment Request (ABAR)**

NOTE: The review performed by the RU was based on RL/REG-96-03, *Guidance for Review of TWRs Privatization Contractor Employee Concerns Management System*, dated October 1996. Areas discussed below are discussed in Section 6.0, "Attributes for Key Program Elements."

General Comments

- The ABAR did not address changes needed in the Integrated Safety Management Plan (ISMP). There are several sections in the ISMP that appeared inconsistent with the current BNFL practices and the proposed ECP.
- The proposed ECP contained inconsistent terminology. For example, the reviewers could not differentiate between the use of "project implementing documents" versus "program implementing documents." Additionally, the use of these terms was not specific enough to allow the RU to understand how these requirements would be controlled. The RU needs assurance that the implementing documents will be sufficiently controlled so as to continue to provide an effective ECP.
- The proposed ECP referenced RLID 5480.29 as its basis. Table S4-1 of the contract references the use of DOE Order 5480.29. BNFL did not explain why the RLID was chosen versus the DOE Order as referenced in the contract. In addition, 10 CFR 708 and 29 CFR 24 were also not discussed in the basis.
- Definitions of the terms *protected activities*, *reprisal and retribution*, and *protection procedures* are not included in 29 CFR 24 and 10 CFR 708 as stated in Section 2 of the proposed ECP.
- The proposed ECP did not make it clear that the primary DOE contact is the RU. Instead the proposed ECP referred to DOE as "external organizations" and DOE in general. Additionally, Section 4.4 described sending reports to the DOE-RU Employee Concerns Program Manager. The program description should make it clear that BNFL employees should use the RU as their primary DOE contact. Additionally, reports generated to the RU should be addressed to the DOE/RU Safety Allegations Program Coordinator.

Commitment to DOE policy on Employee Concerns

- The proposed ECP recognized that an atmosphere of open communication should exist within the organization that encourages the expression of safety concerns

and promotes their resolution at the lowest level practicable. However, conditions can arise where employees believe that recourse to their employer is not effective. Employees should be advised that they are not obligated to express their concern to their internal company management prior to notification of the RU or other authorized agencies that could receive employee concerns. The proposed ECP does not address this issue in a clear and unambiguous manner. Section 4.2 seemed to indicate that escalation to other agencies was acceptable once the issue had been identified and was in the process of being resolved.

Designation of Employee Concerns Manager

- The proposed ECP acknowledged that the ECP manager would be designated by senior management and this designation would be widely publicized throughout the organization and to outside coordinating agencies such as the RU. The program did not discuss the periodic submission, to the RU, of a complete list of its program managers including names, titles and phone numbers.

Notification of Employees and Establishing a Hotline

- The proposed ECP did not address or describe ECP information posters and notification posters that are required by 29 CFR 24.2 and 10 CFR 708.40. The use of ECP information poster should be described in the program. The discussion should also include a description of the information that will be provided, including a description of the employee's right to recourse directly to the Department of Labor from prohibited acts under 29 CFR 24. In some instances, the recourse is to DOE under 10 CFR 708.
- The proposed ECP did not address the use of a hotline. The program should describe the use of a 24 hour hotline and how this telephone line will be controlled.
- The proposed ECP addressed mandatory ECP training. However, the language was ambiguous on whether this mandatory training was part of the orientation training or a stand alone ECP training module.

Operation of an Employee Concerns Management System

- The proposed ECP addressed informing the employee that the ECP has received his/her concern. However, the program should also acknowledge the categorization of the concern received.
- The proposed ECP did not describe the type of information that will be maintained as ECP records. Sufficient details should be specified in the program description to ensure unique traceability of the concern received. For example, priority assigned, the individual assigned to investigate, and evidence of completed actions within the required time can be used to provide traceability.

- The proposed ECP did not discuss the investigative process. For example, there was no discussion of the types of individuals that will be used to conduct the investigations. There was no discussion of the minimum amount of information that would be considered in the investigative process.
- The proposed ECP discussed issuance of quarterly ECP reports to the RU. However, it provided limited information on what kind of information would be provided. The program should describe the minimum amount of information that will be provided in these reports. This information is needed by the RU to ensure that we can in turn support quarterly reports issued to the DOE-RL Office of Employee Concerns. Additionally, the proposed ECP did not address whether these quarterly reports would include ECP activities of subcontractors.
- The process described in the proposed ECP focused on identification and tracking of concerns raised by the employee. Little information was provided on the investigation and closure process. For example, no information was provided on the type of independent verification to be used to ensure that a concern has been adequately addressed and that the corrective actions have been implemented and fit the concern raised.
- The proposed ECP described an expected timeline for processing a concern, i.e., normally within thirty days. However, the program did not discuss the process that would be used to grant exceptions to the thirty day timeline. The program description should provide general guidelines for granting an exception to the thirty day timeline. For example, the program should describe how the exception will be formally documented with intended completion dates identified and reviewed by a designated senior manager to indicate concurrence with the exception.
- The last sentence of Section 4.2 of the proposed ECP stated that an employee raising a concern anonymously may telephone ECP staff to learn the status of the concern. The last sentence of Section 5.3 stated that such an employee had a responsibility to contact ECP staff regarding the status. The two statements do not appear consistent. Moreover, it isn't clear whether or why such an employee should have a responsibility for follow-up (particularly by telephone where technology such as caller ID could be used to learn the identity of the caller).
- The proposed ECP did not provide assurance that investigation of concerns will not be performed by the employee's organization.
- The proposed ECP did not assign responsibility for establishing measures to ensure confidentiality. This should be clearly stated as a responsibility of the ECP Officer.

Identification of Significant Issues

- The proposed ECP did not address referral of concerns to affected DOE groups or other agencies. The program description should address the establishment of criteria for such referral.
- The proposed ECP briefly discussed generating external reports. However, it was not clear what kind of reports would be generated and who was responsible for ensuring that these reports are generated in an accurate and timely fashion. For example, the program description should describe how some concerns may warrant notification to other responsible parties. Other parties should include responsible regulatory agencies if conditions exist that are reportable by regulation or agreement with those agencies. The program description should make it clear that such reporting is the responsibility of the contractor and not the employee.